



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO VIRGINIA ELECTRIC AND POWER COMPANY Permit No. VA0004146

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and VA Power, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "VA Power" means Virginia Electric and Power Company, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the VA Power Chesterfield Power station located in Chesterfield, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means VPDES Permit No. VA0004146, which became effective December 10, 2004, and expires on December 9, 2009.
10. “Regulation” means 9 VAC 25-31-10, *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

SECTION C: Findings of Fact and Conclusions of Law

1. VA Power owns and operates an electric power generating facility in Chesterfield, Virginia. This Facility is the subject of VPDES Permit No. VA0004146, which allows VA Power to discharge treated wastewater into the James River in strict compliance with terms, limitations and requirements outlined in the permit.
2. On January 13, 2005, VA Power discovered an unusual discharge event at its ash pond outfall 004. The ash pond short-circuited due to an excess of accumulated fly ash, resulting in a discharge high in sediment.
3. On January 13th and 19th Department Staff conducted an inspection of the Facility after VA Power reported the event. The VA Power staff reported this event in a timely manner and initiated some immediate actions to restore proper flow in the ash pond. VA Power increased the depth of the pond to increase retention time and slow the discharge flow. Long-armed excavators were used to establish a better flow pattern. VA Power added a polymer to the wastewater to improve settling and obtained a large and long floating sediment curtain to redirect and slow flow. Arrangements were made for a dredge to be delivered and employed to remove accumulated solids and to improve the wastewater flow pattern and to improve solids settling. A local pollution cleanup company was contracted and assisted in remedial efforts.
4. On March 8, 2005, the Department issued a NOV to VA Power for TSS and pH violations reported on DMRs for the January 2005 monitoring period. A Department review of data submitted by VA Power indicates that the unusual discharge continued throughout February and into March 2005.
5. The Department met with VA Power on March 23, 2005, to discuss the discharge event which continued into March, and the corrective action that had taken place since the start of the event. An investigation revealed that the cause of the unusual discharge was a combination of the ash removal method employed by the ash removal contractor and failure to account for the difference in ash weight caused by residual water. VA Power submitted an operation and maintenance

manual which included the handling of accumulated solids at outfall 004. The manual, to be approved by the Department, will provide for more detailed and frequent analysis of the ash disposal process with a third party contractor, for a period of time, cross-checking the process on a monthly basis.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders VA Power, and VA Power agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders VA Power, and VA Power voluntarily agrees, to pay a civil charge of \$34,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for VA Power. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of VA Power, for good cause shown by VA Power, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without delay and expense of litigation VA Power agrees to the entrance of this Consent Order, and admits the jurisdictional allegations of the Order but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.
4. VA Power consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VA Power declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and

it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by VA Power to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VA Power shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. VA Power shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VA Power shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which VA Power intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

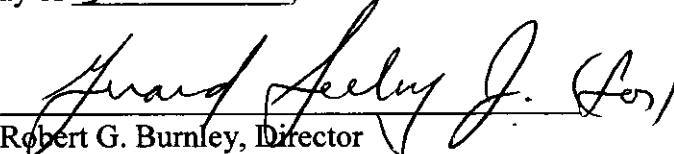
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VA Power. Notwithstanding the foregoing, VA Power agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. VA Power petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to VA Power.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve VA Power from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, VA Power voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 29, 2005,


Robert G. Burnley, Director
Department of Environmental Quality

VA Power voluntarily agrees to the issuance of this Order.

By: 

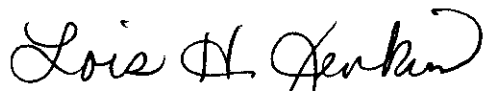
Date: May 18, 2005

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 18th day of May, 2005, by J. David Rives, who is
J. David Rives, P.E.

Vice President Fossil & Hydro of VA Power, on behalf of the Corporation.


Notary Public

My commission expires: 10-31-07

APPENDIX A

VA Power shall:

1. On or before July 31, 2005, submit to the Department for review and approval a stream assessment and a plan for remediation of the ash discharged to Farrar Gut and the James River. The stream assessment shall include at a minimum bathymetric and macroinvertebrate surveys of Farrar Gut and the area downstream of the discharge, an assessment of the amount and extent of solids deposition resulting from the ash discharge, and a map accurately depicting the location of discharge pipes and sampling locations. The results of all testing shall be provided with the assessment. The plan for remediation shall include recommendations for corrective actions determined to be necessary based on the results of the stream assessment, and an end date for their completion.
2. Thirty days following the completion of the remediation in 1. above, submit to the Department a report providing details of the activities undertaken to restore the affected area, and a plan for follow-up instream biological assessments determined appropriate to evaluate recovery of the stream. The follow-up recovery plan shall include a detailed description of the study area, the methodology to be used, and a map accurately depicting the location of the discharge pipe and sampling locations. The follow-up recovery plan must have Department approval before the collection of data begins.
3. Upon the Department's approval of the follow-up recovery plan and the incorporated sampling schedule, conduct the instream biological assessment. The assessment shall be conducted and reported in accordance with the approved schedule until the Department determines the assessments are no longer necessary or the Order is closed, whichever comes first. Each report shall include the assessment results, an interpretation of the results, and conclusions regarding the necessity for further remedial action.

Pursuant to this Order communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

VA Power shall confirm, in writing, completion of the Order requirements to the above address **within twenty (20) days of completion.**